

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>BERLAINE SMITH MELTON</b> <i>Plaintiff</i> <b>v.</b> <b>SEPTA,</b> <i>Defendant</i>	<b>CIVIL ACTION NO. 23-1260</b>
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**ORDER GRANTING IN PART, DENYING IN PART DEFENDANT’S MOTION TO  
DISMISS**

AND NOW this 18th day of March, 2024, for reasons stated in the foregoing Memorandum, Defendant’s Motion to Dismiss is **GRANTED in part** and **DENIED in part**. Defendant’s Motion to Dismiss Plaintiff’s ADA Claim is **DENIED**. Defendant’s Motion with respect to Plaintiff’s Title VII claim is **GRANTED without prejudice, and with leave for Plaintiff to amend her Complaint**.

1. If Plaintiff files an Amended Complaint, she must restate all of the facts supporting her claims against SEPTA.<sup>1</sup>
2. Plaintiff must allege all her claims with sufficient clarity for both the Court and counsel for Defendants to understand, including:
  - a. A description of each separate claim (for example, Title VII, ADA, ADEA) being made;
  - b. The specific facts supporting each claim;

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<sup>1</sup> The Third Circuit has noted that “[i]t is one thing to set forth theories in a brief; it is quite another to make proper allegations in a complaint.” Pa. ex rel. Zimmerman v. PepsiCo, Inc., 836 F.2d 173, 181 (3d Cir.1988). “[I]t is axiomatic that the complaint may not be amended by the briefs in opposition to a motion to dismiss.” Id. (alteration in original) (quoting Car Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1107 (7th Cir.1984)). Moreover, while the Court construes pro se filings liberally, pro se litigations “cannot flout procedural rules—they must abide the same rules that apply to all other litigants.” Mala v. Crown Bay Marina, Inc., 704 F. 3d 239 244-45 (3d Cir. 2013),

- c. A clear timeline of any complaints she filed with either state or federal agencies qualified to enforce the American with Disabilities Act (ADA), Title VII violations, or the Age Discrimination in Employment Act (ADEA).
  - d. A clear description of the substance of any complaints she filed with either state or federal agencies qualified to enforce the American with Disabilities Act (ADA), Title VII violations, or the Age Discrimination in Employment Act (ADEA).
- 3. Plaintiff has **thirty (30) days** to file an Amended Complaint.
  - 4. Plaintiff is strongly urged to seek counsel to represent her as soon as possible. Plaintiff shall consult this Court's panel of employment attorneys specializing in employment discrimination to seek counsel. Information can be found at this Court's website:  
<https://www.paed.uscourts.gov/volunteer-attorney-panels>,
  - 5. However, if Plaintiff is not able to retain council, for any reason, Plaintiff may proceed, but must follow the Federal Rules of Civil Procedure, the local rules of this court, and this Court's practice rules.

**BY THE COURT:**

/s/ Michael M. Baylson

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**MICHAEL M. BAYLSON**  
**United States District Court Judge**